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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,269	03/19/2004	Stephen G. Armstrong	P68.2-11514-US01	7435
490 7590 11/16/2007 VIDAS, ARRETT & STEINKRAUS, P.A. SUITE 400, 6640 SHADY OAK ROAD EDEN PRAIRIE, MN 55344			EXAMINER MORGAN JR, JACK HOSMER	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 11/16/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/804,269

Applicant(s)

ARMSTRONG, STEPHEN G.

Examiner

Jack H. Morgan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6,7,23-29 and 31-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33 is/are allowed.
- 6) ☒ Claim(s) 1-4,6,7,23-29,31 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2004 and 19 April 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/30/07</u> JHM | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 30, 2007 has been entered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the dual element design of claim 23 (with an element (having a passageway) between the side edges as claimed in claim 1, and the element further being a slider in the bag opening as set forth in claim 23) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet,

and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 23-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 sets forth an element having a passageway sealed to the first side edges of the bag portion. Claim 23 (dependent from claim 1) sets forth the element comprising a slider in the bag opening. The drawings

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and specification do not disclose the possibility of the element being both sealed to the first side edge and at the same time being a slider.

4. Claims 23-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 1 sets forth an element having a passageway sealed to the first side edges of the bag portion. Claim 23 (dependent from claim 1) sets forth the element comprising a slider in the bag opening. The drawings and specification do not disclose the possibility of the element being both sealed to the first side edge and at the same time being a slider as such, one skilled in the art is unable to make the invention as claimed.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 23-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 sets forth an element having a passageway sealed to the first side edges of the bag portion. Claim 23 (dependent from claim 1) sets forth the element comprising a slider in the bag opening. Examiner is unable to determine if the element comprising a

slider has a valve (Fig 1), if the valve is only in the side-mounted element (Fig 14), if there is a valve in both locations (Not shown) or if the valve element is both sealed to the side as well as being a slider (Not shown). For the purposes of examination, examiner takes the position that there is a valve element comprising the slider as well as a valve element sealed to the first side edge, as this is the most comprehensive idea, although it should be noted that examiner does not find support in the specification for this embodiment.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 4, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Greene (US Re. 30,045). Greene discloses a reclosable bag (Fig 1, 10) having two opposing panes, an opening (16) which can be selectively opened and closed (with 25), a first side edge (13), a second side edge (12) and a bottom edge (14) the edges being sealed, an element (Fig 5, 30) sealed to the first side edge (See Fig 1), the element having a passageway providing fluid communication between the bag interior and outside area, the element further having a valve (34), the valve being a one way valve

configured to accept a suction device in order to allow access to the outside area from the bag interior, the valve further being a check valve (Col 2, lines 61-68).

7. Claims 1, 6 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Ohtsubo (US 2002/0162767 A1). Ohtsubo discloses a reclosable bag (Fig 1) having two opposing panes, an opening (14, 16) which can be selectively opened and closed (18), a first side edge, a second side edge and a bottom edge the edges being sealed, an element (24) sealed to the first side edge (See Fig 1), the element having a passageway providing fluid communication between the bag interior and outside area, the element further having a valve (28), the valve being a two way valve configured to accept a suction device (See abstract).

8. Claims 31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Savicki (WO 02/07628 A1). Savicki discloses a slider (Fig 1, 134) for opening and closing a bag having opposed interlocking features (130, 132), the slider comprising a movable body in the bag opening, and further including a passageway in said body (Fig 3, 197) and means for opening and closing the passageway (198) comprising a one way valve, the one way valve going from the bag interior to the exterior. The passageway is configured to be coupled to a suction device, such as a users mouth. A user, pursing their lips could remove the air from the interior of the bag via the passageway in the slider.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Greene (US Re. 30,045) in view of Ostensen et al. (US 4,725,268). Greene discloses all the limitations of the claims except for the one-way (such as ball or flapper) valve allowing access into the bag interior from the outside area. Ostensen et al. disclose a bag (Fig 1, 10) having a one-way valve to allow fluids (urine) into the bag without allowing fluids out of the bag through the valve. It would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the direction of flow of the one-way valve disclosed by Greene in order to allow fluid into the bag without allowing it out of the bag through the valve as taught by Ostensen et al.

10. Claims 23, 24 and 26-28 rejected under 35 U.S.C. 103(a) as being unpatentable over Ohtsubo (US 2002/0162767 A1) in view of Savicki (WO 02/07628 A1). Ohtsubo discloses all the limitations of the claims, including a slider (22) but does not disclose the element having a passageway and valve as set forth in claim 1 as being a slider, or the specific slider features set forth in claims 24, 26, 27 and 28. Savicki discloses a slider having a passageway and a valve (as set forth in the above 102(b) rejection), and

further discloses opposed interlocking features (Fig 2) comprising a tongue (164, 165) and groove (between 175 and 176) sized and shaped to form a seal when engaged, and said element comprising a slider in the bag opening, said slider having opposed side faces configured to slidably engage with the interlocking features of the seal (See Fig 1-3) and the slider having a shape complementary to the shape of the end of the bag opening to permit the slider to seal against the end of the bag opening (Figs 6-8), the slider containing a first detent (252) and the bag having a second detent (136) configured to engage one another (Fig 8) by producing a snap fit when the slider is moved into the closed position (Fig 7). In order to provide a venting slider which securely seals the bag opening. It would have been obvious to one of ordinary skill in the art at the time of invention to create the bag of Ohtsubo with the slider with a passageway and valve of Savicki in order to provide a venting slider that securely seals the bag opening.

11. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohtsubo (US 2002/0162767 A1) in view of Savicki (WO 02/076258 A1) as applied to claims 23, 24 and 26-28 above and further in view of Plourde (US PG-Pub 2003/0235351). Ohtsubo as modified above discloses all the limitations of the claim except for the slider having opposed side faces to slidably engage with one of said opposed interlocking features along the bag opening where the interlocking features are a tongue and groove and the side face which slidably engages the tongue contains a groove and the side face which slidably engages the groove contains a tongue. Plourde discloses an

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assembly for a slider mounted inside a zipper for reclosable packaging (Fig 3) where a slider (20) has side faces (side faces of slider 20 shown in figure 3) one with a groove (between 66 and 64 or between 70 and 64) to slidably engage the tongue interlocking feature (28, 34, 30), and the other with a tongue (68 or 70) to slidably engage the groove interlocking feature (38, 40, 42, 44, 46) in order to move the two interlocking features together and apart to open and close the bag (see figures 2 and 3, [0036-0039]). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to create the slider of Ohtsubo as modified above with the opposed tongue and groove side faces of Plourde in order to move the interlocking features together and apart to open and close the bag.

Allowable Subject Matter

12. Claim 33 is allowed.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Leclerc (US 4,525,166), Newburger (US 5,240,112) and Cox (US 5,544,752).

14. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack H. Morgan whose telephone number is 571-272-3385. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jack H Morgan
Examiner
Art Unit 3782


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER